

Appln. No. 09/991,090
Amendment dated October 5, 2007
Reply to Office Action mailed June 21, 2007.

REMARKS

Reconsideration is respectfully requested.

Claims 1, 3, 4, 7, 11, 13, 15, 16, and 18 through 21 remain in this application. Claims 2, 5, 6, 8, 9, 10, 12, 14, 17, 22, 23, and 24 have been cancelled. No claims have been withdrawn or added.

Claims 1, 2, 3, 4, 9 and 11 have been rejected under 35 USC 103(a) as being unpatentable over Jiang in view of the newly cited Van Leeuwen patent.

Claims 7, 13 and 18-21 have been rejected under 35 USC 103(a) as being unpatentable over Jiang in view of Van Leeuwen and further in view of Pyhalammi.

Claims 15 and 16 have been rejected under 35 USC 103(a) as being unpatentable over Jiang in view of Van Leeuwen in view of Pyhalammi and further in view of Lightner. These rejections are respectfully traversed.

Claim 1 has been amended to recite, in part, that "means for determining whether a remaining time period exists, the remaining time period being a period between completion of the information transfer by said transferring means and an end of the time period" and "means for selecting, if the remaining time period exists, an additional information transfer of a size capable of being transferred during the remaining time period". Claims 7, 11, and 13 have been amended to include similar but not identical requirements.

As previously pointed out, the rejections of the claims rely upon the Van Leeuwen patent to disclose the elements of the invention stated in the requirements of the earlier form of the claims. However, it is submitted that the Van Leeuwen patent discusses different approaches to the problem of "dead zones", including the delay of transmissions to a time when the

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receiving unit is out of the dead zone, and expediting the transmissions. For example, Van Leeuven states at col. 4, lines 19 through 31 (emphasis added):

Considering the state of the art, the inventors recognized that data loss could be avoided if a communications system gave priority to a mobile unit transmitting or receiving data which was approaching a dead zone. Further, if the mobile unit knew of the approach of a dead zone, data transmission, either to or from the mobile unit in question, could be expedited or delayed. If the system could predict when a mobile unit would exit a dead zone, more efficient use of communications resources could be accomplished. Data to be transmitted to the mobile unit from the base station could be stored in anticipation of dead zone exit. Likewise, the mobile unit could buffer data transmission to the base station while in the dead zone in the same way.

Thus, the Van Leeuven patent disclosed to one of ordinary skill in the art the delay of data transmission, or the expediting of the data transmission, but does not suggest the selection required by the claims. The rejection points in part to Van Leeuven at col. 4, lines 40 through 43, which state:

For example, the position information allows the scheduling of data exchanges so that data transmissions are sure to be completed before a dead zone is entered. The type of data to be transmitted can be considered in the prioritization.

However, in light of the portion of the Van Leeuven patent that preceded this passage, which is quoted above, it is submitted that one of ordinary skill in the art would recognize that the "scheduling" discussed here in Van Leeuven is actually talking about delaying of a transmission if it cannot be completed, or expediting (e.g., speeding up) the transmission, but there is no disclosure of a selection of an additional transmission that could be "fit" into a remaining time period.

Van Leeuven further states at col. 4, lines 46 through 51 (emphasis added):

According to an aspect of the invention, from the geographical position information, data transfer between a mobile client and base station may be withheld until a more favorable geographic location

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becomes available. The data to be transmitted can be stored and transmission delayed until after a dead zone is exited, for example.

Again, this statement by Van Leeuven is suggestive that the "scheduling" comprises delay of the transmission, or expediting the current data transmission, but fails to suggest that a selection of another transmission is made based upon time remaining. The general statement regarding "scheduling" by Van Leeuven does not disclose all species of scheduling, especially when Van Leeuven also describes in greater detail that scheduling means delay or expediting.

It is thus submitted that, rather than trying to attempt to select and transmit another transmission in a remaining time period, the Van Leeuven patent is more likely to suggest to one of ordinary skill in the art to not make (delay) the transmission until the mobile unit moves out of the dead zone.

As previously pointed out, the rejection admits that "Jiang did not explicitly state executing an additional information transfer completed within the remaining time period." The rejection, however, contends that the Jiang "system tracks the time period during which communications can be made as well as the time it takes to transfer a first content" and thus that "the system clearly maintains the remaining time period, simply the difference."

It is again respectfully submitted that this contention reads more into the Jiang patent than is actually disclosed therein. It is agreed that the Jiang patent is concerned with ensuring that information is transmitted during a predicted time period. However, there appears to be no specific teaching in Jiang of tracking the remaining time after a first transmittal and, more importantly, no teaching of executing an additional information transfer during the remaining time period determined by such tracking. In this regard, in the passages to which reference is made, there is no disclosure in

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Jiang that the Jiang system does not simply transfer as much data (e.g., all of the day's news stories) as it can within the ten minute time period for data transfer. With respect to motivation, it is agreed that this feature of the present invention is a desirable one, but this does not render the feature obvious. In fact, it is respectfully submitted that the opposite is true given the actual teachings of Jiang.

Of course, the rejection relies upon the Van Leeuwen patent in attempting to make up the deficiencies of Jiang as a reference against the claims. The rejection contends that "Van Leeuwen's system explicitly calculates a remaining time period so that a determination can be made as to whether or not to attempt further information transfer." The rejection further contends that "[i]t would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Jiang by adding the ability to determine whether a remaining time period exists and execute an additional information transfer that can be completed within the remaining time period as provided by Van Leeuwen." As for motivation, it is asserted that "[h]ere the combination satisfies the need for an improved mobile communications system which overcomes the problems of wasted time and bandwidth," citing "Van Leeuwen, column 3, line 59 through column 4, line 6." Elsewhere in the Office Action the rejection relies on Van Leeuwen, "column 4, lines 40-43 and column 7, lines 20-49" and with respect to "said predicting means predicting the time period based on both of the following: data rate and file priority", the rejection points to Van Leeuwen "column 7, lines 48-57."

However, it appears clear from the passage that VanLeeuwen is not concerned in selecting an information transfer that is capable of being transmitted in a remaining time period, but either speeding up a transmission or delaying a transmission. So, while the claimed invention is directed to determining a remaining time period and then selecting a information transfer to fit that time period, VanLeeuwen merely gives

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network priority to a unit approaching a dead zone (which does not require any selection) or simply delaying the transmission by the unit (which also definitely does not involve any selection).

The Van Leeuwen reference relates to mobile client-based wireless communication system which uses geographic position information regarding a respective client relative to one or more communication dead zones. When a mobile client is approaching a dead zone, data communications can be delayed until the dead zone is traversed or given higher priority to expedite transmission completion before a dead zone entry. The position information is communicated to a base station and the information compared with the locations of respective dead zones. An estimated time before the mobile unit enters a dead zone is then communicated to that unit. The mobile unit uses this information to determine whether sufficient time remains before entering the dead zone to transfer one or more blocks of data.

Considering the specific passages to which the Examiner has referred, the passage bridging columns 3 and 4 merely provides that "[w]asted bandwidth may occur, if, for example, a transmitter tries to repeat a transmission when the receiver is totally incapable of receiving the information" and that this "might occur, for example, if the receiver is in a vehicle and the vehicle is inside of a tunnel which is naturally shielded from radio transmissions." The rest of the passage relates to lack of reception due to "the relative location of the transmitter and receiver, i.e., relative to a dead zone."

As stated in a previous response, it is respectively submitted that nothing in this passage concerns determining whether a remaining time period exists subsequent to a transferring means completing an information transfer within the time period and, if a remaining time period is determined to exist, the transferring means executing an additional information transfer

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that can be completed within the time period. All of the examples in this passage have to do with different problems from that addressed in the claims and the very general reference to wasted time and bandwidth is not a proper basis for combining the references given the very different teachings of the two references and the emphasis in Van Leeuwen on the problems caused by dead zones.

Similar remarks apply to the other passages in Van Leeuwen that have been cited. Lines 40-43 of column 4 describe avoiding data loss as a unit approaches a dead zone and granting priority to a particular unit as the unit approaches the dead zone. Lines 17-49 of column 17 refer to a specific claim, claim 2, and it is clear that the subject matter of claim 2 of the reference is different from that claimed here. For example, the rate of travel of a mobile unit is not the same thing as the claimed "data rate" and the scheduling step of the reference is clearly based on estimations and not with determining whether a remaining time period exists subsequent to the completion of an information transfer within the time period. Column 15, lines 52-55 of the reference refers to communications with multiple clients and states that "prioritization of transmissions based on the relative positions of each mobile client with respect to one or more dead zones uses bandwidth more efficiently." This is not a teaching of the subject matter being claimed.

With respect to claim 1, this claim further recites that the predicting means predicts "the time period based both of the following: data rate and file priority." Regarding this feature, the Examiner contends that "[although Jiang discusses data rate, he is not explicit as to utilizing a file priority" but that "Van Leeuwen explicitly states the use of data rate and file priority in predicting time periods." First, it is not seen that either reference discloses the "data rate" feature, i.e., predicting the time period based on the rate at which data is transmitted. As is discussed in more detail below, this is not the same thing as estimating a time period (as in Van Leeuwen).

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Similar remarks relate to the "file priority" feature; while, as was indicated above and is also discussed in more detail below, Van Leeuwen makes some reference to prioritization, it is not seen that the reference discloses this specific feature. In addition, similar remarks also apply to claim 7 with respect to the "file size, data rate and user preference" feature and to claim 21.

Turning to the "Response to Arguments" section, it is again respectfully submitted that "estimating the time before a mobile unit enters a dead zone" and using "this information to determine whether sufficient time remains for entering the dead zone to transfer one or more blocks of data" is not the same thing as determining whether a remaining time period exists subsequently to completing a particular information transfer within the time period and then executing an additional information transfer if a remaining time period is determined to exist. It is respectfully submitted that Van Leeuwen does not specifically teach that a first information transfer has taken place prior to estimating the time remaining in the period.

Further, applicant respectfully disagrees with the contention that the teaching in Van Leeuwen "that the system includes priority procedures which take into account both bandwidth used in information transfer and urgency of the transmission" meets "the limitation at hand". It is respectfully submitted that "bandwidth" is simply not the same thing as data rate, and in this regard, in situation wherein a particular communication system places limitations on the available bandwidth, this does not mean that the data rate cannot be varied within this bandwidth. Further, "urgency" is not the same thing as assigning a file priority to each of the files in question. In this regard, "file priority" can take into consideration factors other than urgency, as explained in the application. It is noted that the "data rate" feature is included in each of claims 1, 7 and 21 and thus, that these claims distinguish over the references cited for at least this reason.

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Turning to the rejections of independent claims 7, 13 and 21, the Pyhalammi reference is also relied on in these rejections. First, regarding claims 7 and 21, it is clear that Pyhalammi likewise does not teach the "data rate" feature, and thus, again, these claims are patentable for at least this reason.

Considering the Pyhalammi reference in more detail, as discussed in previous responses, the Pyhalammi patent discloses a mobile content delivery system which is concerned with preventing the system "from managing present network load conditions while a message is being delivered or to be time delayed to suit the existing demands on a wireless network" (column 1, lines 38-45 cited by the Examiner). The reference provides for selection by a user of a class of delivery for the content and states that this class of delivery "can be selected by the user on a transaction basis, or subscription-based and pre-defined in a user profile".

The reference also refers to a "deliver NOW" delivery claims and a specified "time delay delivery class." (This is described in the last paragraph of column 1 to which the Examiner has also referred.) In lines 46-61 of column 6 to which the Examiner has also made reference, Pyhalammi discloses assessing "past and present cell capacity, current user location, content file size, and time remaining 'to deliver content'" and that if the time window in question is not an appropriate one "to deliver the message content, the queue priority of the message is adjusted based on the absolute time remaining to deliver the message content while taking into account the time lapsed to reach the 'NO SEND' decision."

Assuming for the sake of argument, the proposed combination of Jiang, Van Leeuwen and Pyhalammi is a proper one, it is respectively submitted that claims 7,13 and 21 patentably define over this combination. In this regard, claim 7 recites that the predicting means predicts the time period based on file size, data rate and user preference while claim 13

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recites that the priority determination for prioritizing files is based on both file importance and file size. It is not seen that the subject matter of these claims is taught by the references relied on.

With respect to independent claim 21, this claim recites, *inter alia*, that information is transferred based at least in part on a priority of a first one of at least two users relative to the other, as determined by determining means from the personal profiles of the users in question, and that the personal profile of the users includes a schedule of the users and that the priority determination is made based on data rate, file size and file importance. These features are not taught by the references and thus, it is respectfully submitted that claim 21 defines over the references cited for the reasons discussed above, as well as additional reasons.

In the "Response to Arguments" section, the Examiner argues that "Col. 1, lines 52-67, shows the ability in Pyhalammi's system for the user to select certain features of the information transfer meaning the user has a preference as to how and when information is transferred". The Examiner also states that "[u]ser profiles are maintained" and that the "other previous line citations to Pyhalammi discuss in more detail the use of user profiles to provide content to the users at the most appropriate times and in the most appropriate ways."

In response, it is first noted that with respect to claim 7, there is no teaching in any of the references of using all three of the factors recited in claim 7 and, again, no teaching of the use of data rate as one of these factors. Regarding claim 13, there is no teaching in the references of a priority determination for prioritizing files based both on file importance and file size. Finally, regarding claim 21, while Pyhalammi may discuss the use of user profiles to provide content to the users, there is no disclosure of means for transferring information based at least in part on the priority of the first one of multiple users relative to other users, as determined by

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determining means, based on the personal profiles of the various users. In the reference, it is the user that makes determination while in the system of claim 21 it is determining means of the system that makes a determination based on personal profiles. Further, there is simply no teaching in any of the references of making a priority determination based on both file size and file importance and certainly no teaching of making a determination based on all three of data rate, file size and file importance. It is respectfully submitted that the discussion in the "Response to Arguments" section regarding the Pyhalammi reference does not address these specific issues, but rather merely describes general teachings of Pyhalammi with respect to user preference.

Regarding the rejection of claims 15 and 16, it is respectfully submitted that these claims are patentable for at least the reasons set forth above in support of the schedule of the users and that the priority determination is made based on data rate, file size and file importance. These features are not taught by the references and thus, it is respectfully submitted that claim 21 defines over the references cited for the reasons discussed above, as well as additional reasons.

In the "Response to Arguments" section, the Examiner argues that "Col. 1, lines 52-67, shows the ability in Pyhalammi's system for the user to select certain features of the information transfer meaning the user has a preference as to how and when information is transferred". The Examiner also states that "[u]ser profiles are maintained" and that the "other previous line citations to Pyhalammi discuss in more detail the use of user profiles to provide content to the users at the most appropriate times and in the most appropriate ways."

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factors. Regarding claim 13, there is no teaching in the references of a priority determination for prioritizing files based both on file importance and file size. Finally, regarding claim 21, while Pyhalammi may discuss the use of user profiles to provide content to the users, there is no disclosure of means for transferring information based at least in part on the priority of the first one of multiple users relative to other users, as determined by determining means, based on the personal profiles of the various users. In the reference, it is the user that makes determination while in the system of claim 21 it is determining means of the system that makes a determination based on personal profiles. Further, there is simply no teaching in any of the references of making a priority determination based on both file size and file importance and certainly no teaching of making a determination based on all three of data rate, file size and file importance. It is respectfully submitted that the discussion in the "Response to Arguments" section regarding the Pyhalammi reference does not address these specific issues, but rather merely describes general teachings of Pyhalammi with respect to user preference.

Regarding the rejection of claims 15 and 16, it is respectfully submitted that these claims are patentable for at least the reasons set forth above in support of the patentability of claim 13 which is parent thereto. Further, the need to cite four references in rejecting these claims is further evidence of the non-obviousness of these claims.

Allowance of the application in its present form is respectfully solicited.

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CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

GATEWAY, INC.

By 
Jeffrey A. Proehl (Reg. No. 35,987)
Customer No. 24,333
610 Gateway Dr.
MD Y-04
North Sioux City, SD 57049
Voice: 605.232.2000 ext.26809 (Lori Boulware, Patent Assistant)
Fax 605.232.2612

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